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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 404

In the Matter of the Arbitration

of

Certain Controversies between LIONEL LANE, as President of Endicott Leather Workers Union, Local 285, International Fur and Leather Workers Union of the United States and Canada, CIO,

and

ENDICOTT JOHNSON CORPORATION,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, BROOME COUNTY

BRIEF IN OPPOSITION

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Opinion Below

The Court of Appeals of the State of New York unanimously affirmed, without opinion, 299 N. Y. 725 (R. 109) the decision of the Appellate Division, Third Department, 274 App. Div. 833 (ff. 313-319) which in turn unanimously affirmed the Supreme Court of the State of New York, Special Term, Broome County, 75 N. Y. S. (2d) 171 (not officially reported) (ff. 250-278).

Jurisdiction

The order of affirmance by the Court of Appeals (R. 109-111) was entered on July 19, 1949. The petition for writ of certiorari was filed October 17, 1949. The petition states (pp. 4, 18) that jurisdiction of this Court is based on 28 U. S. C. A. 344(a), as amended; presumably petitioner refers to 28 U. S. C. A. 1257(3) in the revision effective September 1, 1948.

Statement

In 1944, the Union, as the certified bargaining representative of the employees in an appropriate bargaining unit, entered into a collective bargaining agreement with the employer for a term to expire June 1, 1947 (f. 21; Pet. Ex. A, ff. 43-144). The agreement fixed wages, hours, and conditions of employment, including a provision against discharge without just cause and provided for a procedure, culminating in arbitration, for the settlement of all grievances and disputes arising between the parties during its term (Art. VIII, ff. 95-106).

During the term of the agreement, disputes arose respecting wage rates to be paid to rollers in the sole leather tannery and concerning the employer's discharge of three workers which the Union claimed to be unjust. During the term of the agreement the Union demanded arbitration of these disputes, and, at the time of its expiration, June 1, 1947, the parties were engaged in discussions for the selection of the arbitrator (f. 186).

On June 12, 1947, the employer notified the Union that the agreement having expired it would no longer submit the disputes which had arisen under and during the term of the agreement, and which were pending at the time of its expiration, to arbitration (ff. 151-153).

Thereafter, and upon the enactment of the Labor-Management Relations Act, 1947, the employer asserted as an additional reason for its refusal to arbitrate, the existence of that statute and the Union's non-compliance therewith.

The New York Supreme Court held that the agreement to arbitrate having concededly been made and the employer's refusal to arbitrate being admitted, an order directing arbitration of the rights of the parties under the contract would be entered. The order provided, however, that the arbitration be restricted "to so much of the said grievances as were pending during the life of said contract, and in no event beyond midnight May 31, 1947" (f. 11), the expiration date of the agreement.

The Appellate Division unanimously affirmed in a per curiam opinion and the Court of Appeals unanimously affirmed without opinion.

The Question Presented

Is the order, made pursuant to the provisions of the New York arbitration statute (C. P. A. Article 84), directing petitioner to submit to arbitration two controversies arising under and pursuant to the terms of the concededly valid collective bargaining agreement, repugnant to the Labor-Management Relations Act, 1947?

Argument

The nub of petitioner's argument is that this proceeding, to compel arbitration of grievances arising under and during the existence of a concededly valid collective bargaining agreement, is equivalent to a demand for collective bargaining rights under the Labor-Management Relations Act. It is obvious, however, that the sole purpose and effect of the proceeding is to compel petitioner to arbitrate grievances arising under a concededly valid col-

lective bargaining agreement in order to vindicate rights flowing only from that agreement and not from any statute. The rights involved are the right not to be discharged without just cause and to be paid certain wage rates. The statute has nothing to do with these matters. They stem entirely from the provisions of the contract, the validity of which is not in question at all.

The order of the New York Supreme Court does not establish the Union's right to negotiate a new contract upon the expiration of the 1944 agreement. Nor does it determine the Union's status as the collective bargaining representative beyond the term of the agreement in question. Indeed, as noted, the Supreme Court has expressly limited the arbitration to the period of the agreement.

The New York Court of Appeals has made clear that an order directing arbitration under the provisions of a collective bargaining agreement does not involve a determination of the statutory bargaining rights, that matter lying within the exclusive jurisdiction of the National Labor Relations Board. *Levinsohn* v. *Joint Board,* 299 N. Y. 454.

This, of course, disposes of *Amazon Cotton Mills* v. *Textile Workers Union,* 167 F. (2d) 183 and *International Longshoremen's and Warehousemen's Union* v. *Sunset Line and Twine Co.,* 77 F. Supp. 119, cited by petitioner (pp. 23-25). Those cases deal with the enforcement of rights which by *statute,* i.e. the Labor Management Relations Act, 1947, had been placed exclusively in the hands of the National Labor Relations Board. The purport of the decisions in those two cases was that the respective plaintiffs could vindicate rights, created solely by the Act, only before the administrative tribunal created for that specific purpose.

The Union in this proceeding is not, however, seeking to assert any statutory rights granted by the Act. It seeks only to enforce the arbitration provisions of a concededly valid collective labor agreement—a proceeding which does not even remotely involve the Labor Manage-

ment Relations Act, 1947, and which, by no stretch of the imagination draws into question the validity of Article 84.

Further, compliance with that Act is not a condition precedent to arbitration under the provisions of a valid agreement. Compliance is merely a condition precedent to application to the Board for its facilities, including certification. Non-compliance by a labor union does not impair the validity of contracts made by the Union with employers absent a claim to representation by another union, which is not involved here.

If petitioner's position were upheld, unions which have not complied with the filing and affidavit requirements of the Act for the more than two years since its enactment could not seek arbitration of grievances under their agreement, nor, indeed, enforce their agreements in any way whatever. Yet, it is common knowledge, that many unions which have complied only recently and others which are not yet in compliance have concluded, since the enactment of the Labor-Management Relations Act, 1947, literally hundreds of agreements which have not heretofore been questioned. Petitioner's position is that a non-complying union not only has no right of access to the National Labor Relations Board but cannot conclude an enforceable collective bargaining agreement. The provisions of the Act do not support this position, which could lead only to chaos and confusion in labor relations.

This case is a classic illustration of procrastination by an employer to avoid settlement of controversies pending since early in 1947 concerning grievances which are at the very heart of employer-employee relationship-wage rates and the propriety of discharges. The Supreme Court correctly said that if petitioner's position were upheld, it would "place a premium on delay and give reward to dilatory tactics." (f. 260) since an employer could, as the expiration of the collective bargaining agreement approached, forestall the arbitration process required by the agreement and, upon its expiration, refuse to proceed because the contract was no longer in effect.

There is no merit to this petition. No conflict of decisions is involved and no federal question meriting review by this Court is presented. Therefore, it should be denied.

Respectfully submitted,

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